

# Notice of Allowability

Application No.

09/784,121

Examiner

Humera N. Sheikh

Applicant(s)

MCIVER ET AL.

Art Unit

1615

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 28 February 2005.
2. ☒ The allowed claim(s) is/are 12-14 and 18-27.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 4-30-01
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

*James M. Spear*  
JAMES M. SPEAR  
PRIMARY EXAMINER  
AU 1615

## **DETAILED ACTION**

### **Status of the Application**

Receipt of the Amendment after Final Rejection and Applicant's Arguments/Remarks, both filed 02/28/05 is acknowledged.

Claims 12-14 and 18-27 are pending. Claim 12 has been amended. New claims 18-27 have been added. Claims 1-11 and 15-17 have been cancelled.

### ***Allowable Subject Matter***

Claims 12-14 and 18-27 are allowed.

The following is an examiner's statement of reasons for allowance:

The primary reason for allowance is that the prior art (Sair *et al.* US 4,232,047) do not disclose nor fairly suggest a process for preparing a delivery system comprising a flavor or fragrance ingredient or a composition distributed as droplets throughout a matrix of polymeric carriers whereby the carrier comprises prehydrated agar agar. Rather, the prior art utilizes a different encapsulating medium, such as starch, flour, gum, cereal and protein and is completely silent as to an encapsulating medium of prehydrated agar agar. The prehydrated agar agar, which is not taught or suggested by the art, is significant in screw extrusion processes in that, the water content of the melt to be extruded is generally lower than process of extrusion under pressure into cold solvents taught by the art. The instant process is an improvement over prior art processes and demonstrates unexpected properties since the extruded systems are stabilized in

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aqueous environments, thereby improving retention of the active ingredient or composition therein encapsulated. Moreover, the instant process avoids the additional drying step required in the prior art. The instant invention achieves unexpected advantages, such as stability, using the instant matrix material of prehydrated agar agar in the specific amounts claimed. Additionally, the instant process is economically advantageous over prior art processes since it requires relatively lower quantities of agar agar, and is a successful alternative to prior art capsules that consist totally of agar agar. Since agar agar is an expensive raw material, the lower quantities claimed in the delivery system of the instant invention, as compared with greater amounts required in prior art processes, proves to be economically beneficial. In view of the deficiencies identified in the prior art and the unexpected results imparted by the instant process, the instant invention is rendered non-obvious and *patentable* over the cited prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### **Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Humera N. Sheikh whose telephone number is (571) 272-0604. The examiner can normally be reached on Monday through Friday from 8:00A.M. to 5:30P.M., alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H. N. Sheikh *HNS*

Patent Examiner

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March 17, 2005

*James M. Spear*

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